



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

**HMCTS code
(audio, video,
paper)**

V:CVPREMOTE

Case reference

: CAM/00KF/OLR/2021/0022

Property

**: Flat 2, Mont Dol, 58 Chalkwell Ave,
Westcliff-on-Sea, Essex SSo 8NN**

Applicant

: Gail Patricia King

Representative

: Harold King

Respondents

**: Deborah Burwood, Edward Beale,
Gillian Donovan Buck, Gail King**

Representative

: In person

Type of application

**: Application for determination of a
determination of premium pursuant to
s.48 Leasehold Reform, Housing and
Urban Development Act 1993.**

**Tribunal
member(s)**

**: Tribunal Judge S Evans
Mrs M Hardman FRICS IRRV (Hons)**

**Date and venue of
hearing**

: 16 September 2021, by video

**Date of this
decision**

: 18 October 2021

DECISION

Covid-19 pandemic: description of hearing

This has been a remote decision by Cloud Video Platform. The form of remote decision was V:CVPREMOTE. An in-person hearing was not held because it was not practicable on account of the coronavirus pandemic and all issues could be determined remotely and recorded on CVP. The documents we were referred to are (1) a bundle prepared by the Applicant of 175 pages, and (2) an email attaching 2 consequential applications by the Applicant, and (3) Mrs Donovan Buck's email response to those applications.

DECISION

- (1) The Tribunal determines the premium payable by the Applicant is £6023.**
- (2) The Tribunal determines that the Respondents shall pay the Applicant the application fee of £100 and the hearing fee of £200.**

Introduction

1. By an application dated 8 February 2021, the Applicant seeks a determination of the premium payable in respect of a lease extension of the Property.

Parties

2. The Applicant is the leasehold proprietor of flat 2 and garage 2, comprising the Property.
3. The building in which the Property is situated contains 4 flats. Ms Burwood is the leaseholder of flat 1, Mr Beale is the leaseholder of flat 3, and Mrs Donovan Buck is the leaseholder of flat 4.

The Leasehold and Freehold Interests

4. The lease of the Property is dated 26 September 2008, and runs for a term of 151 years from 27 March 1957.
5. The lease of flat 1 is for a similar term and is dated 30 September 2008.
6. The leases of flats 3 and 4 are for a term of 99 years only from 27 March 1997.
7. The freehold title is held jointly by the Applicant and the above-mentioned leaseholders, registered with effect from 31 July 2018.

Background

8. On 16 September 2020 the Applicant served a Section 42 notice on the freeholders seeking a statutory lease extension. No point is taken about

the validity of this notice, which suggested a premium be paid of £7000.

9. On 18 November 2020 the Applicant caused a chartered surveyor to inspect the Property with a view to valuation. The subsequent valuation report is dated 25 November 2020, and opines that the premium should be assessed at £6023, based amongst other things on a vacant possession value of the Property of £420,000.
10. On 26 November 2020, the freeholders served a counter notice under section 45 of the 1993 Act, suggesting a nil premium. In the covering letter of the same date, signed by Ms Burwood, Mr Beale, and Mrs Donovan Buck, they explained that the offer of granting a lease extension free of charge was based on an alleged precedent established in 2008, when the leaseholders of flats 1 and 2 were allegedly granted extensions and no premium was paid to the freeholders.
11. On 8 January 2021 the Applicant sent an email to the 3 other leaseholders asking for details of their valuer, and enclosing her valuer's details. There was no response.
12. After the application was issued in February 2021, directions were given by Mrs Hardman which provided for the following (amongst other things):
 - (a) By paragraph 2, for the Respondents to provide submissions on the Tribunal's jurisdiction by 12 July 2021;
 - (b) By paragraph 4, for the Respondents to provide a statement of the calculation of premium, also by the same date;
 - (c) By paragraph 7, a direction that the Respondents shall provide to the Applicant copies of any relevant documents on which they rely.
13. The Respondents failed to comply with any of the above directions and on 14 and 22 July the Tribunal had cause to write to the Respondents to warn them that they might be debarred from defending the application as a consequence. There was no response.
14. The Applicant continued to comply with directions including the provision of documents and a bundle, as well as asking the Respondents whether they disagreed with the bundle prepared, to which there was also no response.

The hearing

15. At the commencement of the hearing, the Tribunal asked the Respondents why they had not complied with the Tribunal directions. Mr Beale and Ms Burwood took the position that all the relevant evidence was contained in the Applicant's pack, and that they had not

wanted to adduce any valuation evidence, nor any make any submissions as to jurisdiction.

16. Mrs Donovan Buck explained that she had not wanted to adduce any valuation evidence, nor make any submissions on the matter of jurisdiction; hence she had not served the same. She further explained that she had taken legal advice, and had come to understand that the premium of £7000 suggested was not unreasonable.
17. The Applicant was asked whether or not she was making any application to debar the Respondents from taking part in the proceedings, and she initially indicated she was. However, when asked whether it would be acceptable to proceed with the hearing on the basis that the Respondents were limited to the documents and representations already made in the bundle, she agreed to that course.

The Applicant's submissions

18. The Applicant explained that she relied entirely on her surveyor's report, which had culminated in a calculation of a premium of £6023 based on the following:
 - (1) A converted ground floor flat with 2 bedrooms, 1 living room, 1 kitchen, 1 bathroom and 2 WCs;
 - (2) Garage and communal garden;
 - (3) On the assumption of a lease extension at a peppercorn ground, market value of the flat would be £420,000;
 - (4) Ground rent is currently £10 per annum fixed;
 - (5) Current value of part freehold investment: ground rent calculation of YP 87.44 years at 7% (£143) plus reversion to vacant possession value of £420,000 deferred for 87.44 years at 5% (£5880).
19. The Applicant's surveyor was not present to give evidence. However, the Tribunal drew to the Applicant's attention that there had been a sale of flat 4 in 2018 to Mrs Donovan Buck at a price of £475,000 on a shorter lease, but this sale not been taken into account by her surveyor.
20. The Applicant responded that flat 4 was a 3 bedroom, 2 bathroom property in contrast to her own. She added that all 4 flats were very different.
21. The Tribunal also drew to the Applicant's attention that the unexpired term of the lease for the Property would appear to be 87.52 years not 87.44 years, on the basis that there were 87 and 191 days between 16 September 2020 (the date of the Section 42 notice) and 26 March 2108 (the term date). However, on the Tribunal's calculations, that made a

difference of no more than £1 to be added to the premium calculated by the Applicants surveyor.

The Respondents' submissions

22. Mrs Donovan Buck explained that she had taken legal advice, such that she now understood matters better than she had done at the directions hearing. She went as far as saying that she had looked at the valuation and would agree with it. She confirmed she had purchased flat 4 in July 2018 and also wished to extend her lease. She explained to the Tribunal that she was not challenging the Applicant's surveyor's calculations, except perhaps for wishing to adopt the Tribunal's calculation of the unexpired term of years.
23. When specifically asked about the valuation of the Property at £420,000, she stated that she agreed that figure was not unreasonable. She added she was not opposing the Applicant's calculation of premium; she would just like to get the matter sorted.
24. When asked why she was not wanting to accept her share of approximately £1500 for the premium as independently valued, she had no answer.
25. Mr Beale and Ms Burwood (present in the same room) had difficulty with their audio connection on CVP, such that they could hear all other attendees online, but could not be heard themselves. Fortunately, they were able to join by telephone and the Tribunal proceeded to hear their submissions with no remaining difficulty.
26. On the one hand Mr Beale did not consider that the valuation was a fair market valuation, and he considered it should be higher, albeit that would result in a higher premium payable. On the other hand, he recognised that this argument was in tension with his position that the premium payable should be nil.
27. He contended that in 2019 all 4 leaseholders went to see solicitors to discuss the renewal or extension of their leases. He contended that he understood there was a verbal agreement that the leases would be extended or renewed without a premium being payable by anyone. He accepted that there was no written agreement signed by all 4 leaseholders to this intent.
28. He added that the parties thereafter went to Estate Agents and Valuers and saw someone called Roy Hilton, whom they appointed to draw up new floor plans.
29. He contended that a valuation of the premium in the terms sought by the Applicant would affect the premium payable on any future lease extensions of the other flats.

30. His submissions at times verged on an argument that the Tribunal should not entertain the application for the determination of the premium, on the basis that the parties had reached an agreement outside of the statute for nil premium, such that the jurisdiction of the Tribunal could no longer be invoked (although he did not put it in these terms; he contended it was not fair the Applicant was proceeding to this application). He recognised the obvious difficulty that he had been directed by the Tribunal to make written submissions on jurisdiction, but had not done so.
31. Ms Burwood stated that she totally agreed with Mr Beale. She agreed no premium should be paid; that everyone should have their leases extended for free. She stated that was how she understood things went on in the building when she first took her lease in 2008. She contended that in or about 2009 or maybe 2010, Joyce Rutter, the Applicant and someone called David had held a discussion in the hallway of the building when it was agreed that the parties could extend their leases without paying anything.
32. She added that after the parties had seen the solicitors in 2019, they proceeded to have floor plans drawn up, but matters have not gone any further, because (in her words) “people had got it in their own heads that they had decided to do what they wanted”, and that “somebody is trying to make money out of somebody”. The Tribunal takes these remarks to refer to the Applicant.
33. Ms Burwood added that she did not dispute the calculations made by the Applicant’s surveyor, but considered a nil premium should be determined on the basis of what Mr Beale had said.

The Applicant’s response

34. The Applicant agreed that at some point the parties had gone to solicitors to explore the possibility of new leases. She was adamant that premiums were not discussed at these meetings. She explained there had been lease plans drawn up, but there were subsequent problems with them, at least from her perspective.
35. She denied that any discussion had taken place in 2009/2010 as suggested by Ms Burwood.
36. Mr. King added that he was a joint freeholder in 2008, as confirmed by the written lease to Ms Burwood in that year, and that he had not agreed that leases could be extended for a nil premium, not least because he would have needed to have been a party to the discussions at the time.

Determination

37. Having heard the parties at length, the Tribunal is not satisfied that there was any binding agreement between them that leases were to be

extended for a nil premium. It is clear that the freeholders in 2009/2010 were different to the current freeholders, and that Mr King, despite being a joint freeholder, was not a party to any alleged discussion at that time, and he would need to have been. Further, there is no evidence that the person called “David”, whom Ms Burwood said was present, was a freeholder or representative of any freeholder.

38. As regards the events of 2019, it is notable that at the hearing Mrs Donovan Buck did not advance an argument there had been an agreement in the terms suggested by Mr Beale and Ms Burwood, albeit she had been a signatory to the letter dated 26 November 2020. That letter made no reference to any visit to a solicitor, nor have any attendance notes or witness statements been adduced in relation to the contents of the meeting, despite the Respondents’ clear opportunity to provide the same.
39. Moreover, the Tribunal is conscious of another matter: 2 of the Respondents have unexpired terms of about 76 years on their leases, which will involve their paying marriage value as part of their premiums, should they wish to proceed to a lease extension. Any such premium is therefore likely to be considerably higher to that payable by the Applicant in respect of the Property. In such circumstances, the Tribunal needs to look for independent corroboration of the alleged agreement, but this is sadly lacking.
40. For all these reasons, the Tribunal is not persuaded there has been any agreement outside of the Act, and finds that it does have jurisdiction to proceed to determine the premium under the Act.
41. The Tribunal has considered the valuation by Mr Plaskow FRICS on behalf of the Applicant. With the exception of the unexpired term of years (which makes no material difference to value) the Tribunal has no reason to interfere with his uncontested opinion, because:
 - (1) The rate of 7% is at the upper end of the normal range (in our experience as an expert Tribunal); however, the ground rent is very low and there is no means for its review, which renders the rate acceptable;
 - (2) The other rate of 5% is in our experience standard;
 - (3) The vacant possession value of £420,000 is not so low as to be questionable. Whilst it would have been open to the Respondents to have provided sale values of other comparable properties, they have chosen not to do so whilst the valuer for the Applicant did indeed provide a number of comparable sales. It is true that reference is made within the letters in the bundle to the sale of flat 4 in 2018 at £475,000, but the Tribunal has been given no floor plans of the same, nor evidence as to its amenities or state of repair.

42. For all the above reasons, the Tribunal determines the premium payable by the Applicant should be **£6023**.

Consequential applications

43. By written application, orally supported at the end of the hearing, the Applicant sought a Rule 13 order based on the “vexatious nature of the counter notice”. In support, the Applicant produced 2 invoices:

(1) From a solicitor (HCR) dated 13 April 2021 in the sum of £3964.80 inc VAT for “professional charges in relation to advice with regard to the lease extension process, to include review of the section 42 Notices and Counter notices and instructing Counsel in respect of the same”;

(2) A fee note from Counsel in the sum of £2700 inc VAT for advice given on 18 December 2020.

44. The Tribunal referred the Applicant to *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 in which the Upper Tribunal at para. 43 had observed that Rule 13 applications should not be regarded as routine, that submissions are likely to be better framed in the light of the Tribunal's decision rather than in anticipation of it, and that applications made before the decision is available should not be encouraged. We also reminded the Applicant that the UT had set a high bar for “unreasonable behaviour”, that Rule 13 concerns acts in bringing, defending or conducting *proceedings*, and that the Tribunal retained a discretion whether or not to make any order, even though there may have been culpable conduct. Last but not least, the Tribunal emphasised the need for the Applicant to draw a causal connection between the behaviour and the costs incurred, and that in this case some of the costs not only pre-dated the proceedings but also concerned costs in connection with advice on seemingly unrelated matters such as the s.42 notice.

45. In the light of the above, the Applicant agreed that any Rule 13 Application would need to be made after this decision is sent out, and after mature consideration of all the matters described in *Willow Court*.

46. The Tribunal then indicated that its case officer would send a copy of *Willow Court* to all the parties following the hearing.

47. The second consequential application was for a direction that the Respondents instruct a joint solicitor to prepare the new lease (surrender and re-grant) within 14 days of the Tribunal's decision, failing which the Tribunal should direct the Applicant's solicitor to prepare the new lease, and the Respondents shall pay the costs in advance.

48. The Applicant was unable to direct the Tribunal to any jurisdiction to make an order in the terms sought, particularly at this stage, given that the instant application is for a determination of the premium only.

49. Accordingly, the Tribunal does not make the direction sought.

50. However, the Tribunal does make a determination under Rule 13(2) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 that the Respondents shall reimburse the Applicant the application fee of £100 and the hearing fee of £200. The Applicant has been successful on her application, and these costs should follow the event, we find.

Judge: _____
S J Evans

Date:
18/10/21

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the Property and the case number), state the grounds of appeal and state the result the party making the application is seeking.